

U. S. DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT  
WASHINGTON, D. C.

EXCERPT

FROM

PUBLIC LAW 100-203 -- DECEMBER 22, 1987  
100TH CONGRESS

The following presents amendments to the Nuclear Waste Policy Act of 1982 (Public Law 97-425) and has been excerpted in its entirety and reprinted by the U. S. Department of Energy's Office of Civilian Radioactive Waste Management from the Budget Reconciliation Act for Fiscal Year 1988 (Public Law 100-203) TITLE V.

***TITLE V—ENERGY AND ENVIRONMENT  
PROGRAMS***

***Subtitle A—Nuclear Waste Amendments***

***SEC. 5001. SHORT TITLE.***

*This subtitle may be cited as the "Nuclear Waste Policy Amendments Act of 1987".*

***SEC. 5002. DEFINITIONS.***

*Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) is amended by adding at the end the following new paragraphs:*

*"(30) The term 'Yucca Mountain site' means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.*

*"(31) The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.*

*"(32) The term 'Negotiator' means the Nuclear Waste Negotiator.*

*"(33) As used in title IV, the term 'Office' means the Office of the Nuclear Waste Negotiator established under title IV of this Act.*

*"(34) The term 'monitored retrievable storage facility' means the storage facility described in section 141(b)(1)."*

## **PART A—REDIRECTION OF THE NUCLEAR WASTE PROGRAM**

### **SEC. 5011. FIRST REPOSITORY.**

(a) *SITE SPECIFIC ACTIVITIES.*—Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is amended by adding at the end the following new subtitle:

#### **"SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM**

##### **"SELECTION OF YUCCA MOUNTAIN SITE**

"SEC. 160. (a) *IN GENERAL.*—(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

"(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

"(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170."

(b) *SITE RECOMMENDATION TO THE PRESIDENT.*—Section 112(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)) is amended by—

(1) striking out paragraph (1)(C) and redesignating the subsequent subparagraphs accordingly; and

(2) in subparagraph (C), (as redesignated) by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)".

(c) *TERMINATION OF CANDIDATE SITE SCREENING.*—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (d) and redesignating subsequent subsections accordingly.

(d) *TIMELY SITE CHARACTERIZATION.*—Section 112 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132) is amended by striking all of subsection (f) and redesignating subsequent subsections accordingly.

(e) *SITE CHARACTERIZATION.*—Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(a)) is amended—

(1) by striking "State involved" and all that follows through "tribe involved" and inserting "State of Nevada"; and

(2) by striking "beginning" and all that follows through "geological media" and inserting "at the Yucca Mountain site".

(f) *COMMISSION AND STATES.*—Section 113(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(b)) is amended—

(1) in paragraph (1)—

(A) by striking "any candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either" and all that follows through "may be" and insert "the Governor or legislature of the State of Nevada";

(2) in paragraph (2), by striking "at any candidate site" and inserting "at the Yucca Mountain site"; and

(3) in paragraph (3)—

(A) by striking "a candidate site" and inserting "the Yucca Mountain site";

(B) by striking "either"; and

(C) by striking "the State" and all that follows through "may be" and inserting "the State of Nevada".

(g) **RESTRICTIONS.**—Section 113(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(c)) is amended—

(1) in paragraph (1)—

(A) by striking "any candidate site" and inserting "the Yucca Mountain site"; and

(B) by striking "such candidate site" each place it appears and inserting "such site";

(2) in paragraph (2), by striking "candidate" each place it appears; and

(3) by striking paragraphs (3) and (4) and inserting the following:

"(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

"(A) terminate all site characterization activities at such site;

"(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

"(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

"(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

"(E) suspend all future benefits payments under subtitle F with respect to such site; and

"(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority."

(h) **HEARINGS AND PRESIDENTIAL RECOMMENDATION.**—Section 114(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(a)) is amended—

(1) in paragraph (1)—

(A) by striking "each site" through "development of a repository" and inserting "the Yucca Mountain site";

(B) by striking "in which such site is located";

(C) by striking "not less than 3" and all that follows through "subsequent repositories" and inserting "the Yucca Mountain site";

(D) by striking "in which such site" and all that follows through "case may be" and insert "of Nevada";

(E) by striking the sentence beginning with "In making site recommendations";

(F) by amending subparagraph (D) to read as follows:

"(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;" and

(G) in subparagraph (H), by striking "the State" and all that follows through the end of the sentence and inserting "the State of Nevada";

(2) by striking paragraphs (2) and (3) and inserting the following:

"(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

"(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1)."; and

(3) in paragraph (4) by—

(A) striking "(4)(A)" and inserting "(3)(A)";

(B) striking "any site under this subsection" and inserting "the Yucca Mountain site"; and

(C) by striking "report" and inserting "statement".

(i) SUBMISSION OF APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(b)) is amended—

(1) by striking "a site for a repository" and inserting "the Yucca Mountain site"; and

(2) by striking "in which" and all that follows through "may be," and inserting "of Nevada".

(j) COMMISSION ACTION.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) is amended in the first sentence—

(1) by striking "than—" and all that follows through "(2) the expiration" and inserting "than the expiration"; and

(2) by striking "(e)(2); whichever occurs later" and inserting "(e)(2)".

(k) PROJECT DECISION SCHEDULE.—Section 114(e) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(e)) is amended by striking "repository involved" and inserting "repository".

(l) ENVIRONMENTAL IMPACT STATEMENT.—Section 114(f) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(f)) is amended to read as follows:

"(f) ENVIRONMENTAL IMPACT STATEMENT.—(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

"(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

"(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

"(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

"(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site."

(m) **ON-SITE REPRESENTATIVE.**—Section 117 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137) is amended by adding at the end the following new subsection:

"(d) **ON-SITE REPRESENTATIVE.**—The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund."

#### **SEC. 5012. SECOND REPOSITORY.**

Subtitle E of title I of the Nuclear Waste Policy Act of 1982 (as created by section 5011 of this Act) is amended by adding at the end the following new section:

##### **"SITING A SECOND REPOSITORY**

"**SEC. 161. (a) CONGRESSIONAL ACTION REQUIRED.**—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

"(b) **REPORT.**—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

"(c) **TERMINATION OF GRANITE RESEARCH.**—Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment designed to evaluate the suitability of crystalline rock as a potential repository host medium.

"(d) **ADDITIONAL SITING CRITERIA.**—In the event that the Secretary at any time after such date of enactment considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as—

"(1) seasonal increases in population;

"(2) proximity to public drinking water supplies, including those of metropolitan areas; and

"(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes."

## **PART B—MONITORED RETRIEVABLE STORAGE**

### **SEC. 5021. AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE.**

Subtitle C of Nuclear Waste Policy Act of 1982 is amended by adding at the end the following new sections:

#### **"AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE**

"**SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.**—The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Harts-ville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

"(b) **AUTHORIZATION.**—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.

#### **"MONITORED RETRIEVABLE STORAGE COMMISSION**

"**SEC. 143. (a) ESTABLISHMENT.**—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the 'MRS Commission'), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

"(B)(i) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable stor-

age facility as a part of the Nation's nuclear waste management system.

"(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

"(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

"(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

"(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

"(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

"(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

"(A) repository design and construction;

"(B) waste package design, fabrication and standardization;

"(C) waste preparation;

"(D) waste transportation systems;

"(E) the reliability of the national system for the disposal of radioactive waste;

"(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and

"(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

"(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989.

"(4)(X)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General

*Schedule, for such staff as may be necessary to carry out its functions.*

*"(BXi) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.*

*"(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.*

*"(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.*

*"(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.*

*"(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.*

#### *"SURVEY*

*"SEC. 144. After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—*

*"(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;*

*"(2) minimize the impacts of transportation and handling of such fuel and waste;*

*"(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;*

*"(4) impose minimal adverse effects on the local community and the local environment;*

*"(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;*

*"(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and*

*"(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.*

#### *"SITE SELECTION*

*"SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a moni-*



tored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

"(b) *LIMITATION*.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

"(c) *SITE SPECIFIC ACTIVITIES*.—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

"(d) *ENVIRONMENTAL ASSESSMENT*.—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

"(e) *NOTIFICATION BEFORE SELECTION*.—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

"(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

"(f) *NOTIFICATION OF SELECTION*.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

"(g) *LIMITATION*.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.

#### "NOTICE OF DISAPPROVAL

"SEC. 146. (a) *IN GENERAL*.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

"(b) *REFERENCES*.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and

references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

#### "BENEFITS AGREEMENT

"SEC. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

#### "CONSTRUCTION AUTHORIZATION

"SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

"(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

"(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

"(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

"(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

"(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

"(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not

exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

"(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

#### "FINANCIAL ASSISTANCE

"SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository."

### PART C—BENEFITS

#### SEC. 5031. BENEFITS.

Title I of the Nuclear Waste Policy Act of 1982 is further amended by adding at the end the following new subtitles:

#### "Subtitle F—Benefits

##### "BENEFITS AGREEMENTS

"SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

"(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

"(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

"(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

"(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

"(c) AGREEMENT WITH NEVADA.—The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

"(d) MONITORED RETRIEVABLE STORAGE.—The Secretary shall offer to enter into a benefits agreement relating to a monitored re-

trievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

"(e) *LIMITATION*.—Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

"(f) *JUDICIAL REVIEW*.—Decisions of the Secretary under this section are not subject to judicial review.

#### "CONTENT OF AGREEMENTS

"SEC. 171. (a) *IN GENERAL*.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule:

#### "BENEFITS SCHEDULE

(Amounts in millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt.....	\$5	\$10
(B) Upon first spent fuel receipt.....	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility.....	10	20

"(2) For purposes of this section, the term—

"(A) 'MRS' means a monitored retrievable storage facility,

"(B) 'spent fuel' means high-level radioactive waste or spent nuclear fuel, and

"(C) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

"(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

"(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

"(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

"(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

"(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(b) **CONTENTS.**—A benefits agreement under section 170 shall provide that—

"(1) a Review Panel be established in accordance with section 172;

"(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

"(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

"(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

"(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

"(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

#### "REVIEW PANEL

"**SEC. 172. (a) IN GENERAL.**—The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

"(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

"(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

"(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

"(4) 1 member to represent other public interests, to be selected by the Secretary.

"(b) **TERMS.**—(1) The members of the Review Panel shall serve for terms of 4 years each.

"(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation

for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

"(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

"(c) DUTIES.—The Review Panel shall—

"(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

"(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

"(3) recommend corrective actions to the Secretary;

"(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

"(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

"(d) INFORMATION.—The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

"(e) FEDERAL ADVISORY COMMITTEE ACT.—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

#### "TERMINATION

"SEC. 173. (a) IN GENERAL.—The Secretary may terminate a benefits agreement under this title if—

"(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or

"(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.

"(c) DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

#### "Subtitle G—Other Benefits

##### "CONSIDERATION IN SITING FACILITIES

"SEC. 174. The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

##### "REPORT

"SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987,

*the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.*

*"(b) IMPACTS TO BE CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—*

*"(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;*

*"(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;*

*"(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;*

*"(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;*

*"(5) medical care, including emergency services and hospitals;*

*"(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;*

*"(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;*

*"(8) vocational training and employment services;*

*"(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;*

*"(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;*

*"(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;*

*"(12) availability of energy;*

*"(13) tourism and economic development, including the potential loss of revenue and future economic growth; and*

*"(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility."*

**SEC. 5032. PARTICIPATION OF STATES.**

(a) **FINANCIAL ASSISTANCE.**—Section 116(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10136(c)) is amended to read as follows:

"(c) **FINANCIAL ASSISTANCE.**—(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

"(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

"(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

"(ii) to develop a request for impact assistance under paragraph (2);

"(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

"(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

"(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

"(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

"(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

"(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

"(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

"(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b).



"(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

"(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

"(ii) the procedures to be followed in providing such assistance.

"(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

"(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

"(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

"(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

"(ii) the date on which the Yucca Mountain site is disapproved under section 115; or

"(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

"(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

"(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

"(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

"(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

"(iii) such funds as may be provided under an agreement entered into under title IV.

"(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

"(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987."

**SEC. 5033. PARTICIPATION OF INDIAN TRIBES.**

Section 118(b)(5) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10138(b)(5)) is amended by—

(1) striking "or" at the end of clause (ii); and

(2) adding at the end the following new clause:

"(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;"

**PART D—NUCLEAR WASTE NEGOTIATOR****SEC. 5041. NUCLEAR WASTE NEGOTIATOR.**

The Nuclear Waste Policy Act of 1982 is amended by adding at the end the following new title:

**"TITLE IV—NUCLEAR WASTE NEGOTIATOR****"DEFINITION**

"SEC. 401. For purposes of this title, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands.

**"THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR**

"SEC. 402. (a) **ESTABLISHMENT.**—There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.

"(b) **THE NUCLEAR WASTE NEGOTIATOR.**—(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code.

"(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

**"DUTIES OF THE NEGOTIATOR**

"SEC. 403. (a) **NEGOTIATIONS WITH POTENTIAL HOSTS.**—(1) The Negotiator shall—

"(A) seek to enter into negotiations on behalf of the United States, with—

"(i) the Governor of any State in which a potential site is located; and

"(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

"(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would

agree to host a repository or monitored retrievable storage facility within such State or reservation.

"(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.

"(b) CONSULTATION WITH AFFECTED STATES, SUBDIVISIONS OF STATES, AND TRIBES.—In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

"(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

"(d) PROPOSED AGREEMENT.—(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) for the site concerned.

"(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b).

"(3A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

"(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

"(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.), title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

**"ENVIRONMENTAL ASSESSMENT OF SITES**

**"SEC. 404. (a) IN GENERAL.**—Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a).

**"(b) CONTENTS.**—(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

**"(2)** Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

**"(c) JUDICIAL REVIEW.**—The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119.

**"(d) PUBLIC HEARINGS.**—(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

**"(2)** At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1).

**"(e) PUBLIC AVAILABILITY.**—Each environmental assessment prepared under subsection (a) shall be made available to the public.

**"(f) EVALUATION OF SITES.**—(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

**"(A)** such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987; or

**"(B)** the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.

**"(2)** No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

**"SITE CHARACTERIZATION; LICENSING**

**"SEC. 405. (a) SITE CHARACTERIZATION.**—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a), the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 113, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

*"(b) LICENSING.—(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.*

*"(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.*

#### *"MONITORED RETRIEVABLE STORAGE*

*"SEC. 406. (a) CONSTRUCTION AND OPERATION.—Upon enactment of legislation to implement an agreement negotiated under section 403(a) to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.*

*"(b) FINANCIAL ASSISTANCE.—The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.*

#### *"ENVIRONMENTAL IMPACT STATEMENT*

*"SEC. 407. (a) IN GENERAL.—Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*"(b) PREPARATION.—A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.*

*"(c) ADOPTION.—(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.*

*"(2)(A) In any such statement prepared with respect to a repository to be constructed under this title at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.*

*"(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca*

*Mountain site as an alternate to such site in the preparation of such statement.*

**"ADMINISTRATIVE POWERS OF THE NEGOTIATOR**

**"SEC. 408.** *In carrying out his functions under this title, the Negotiator may—*

*"(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;*

*"(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;*

*"(3) promulgate such rules and regulations as may be necessary to carry out such functions;*

*"(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);*

*"(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;*

*"(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;*

*"(7) adopt an official seal, which shall be judicially noticed;*

*"(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;*

*"(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and*

*"(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).*

**"COOPERATION OF OTHER DEPARTMENTS AND AGENCIES**

**"SEC. 409.** *Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title.*

**"TERMINATION OF THE OFFICE**

**"SEC. 410.** *The Office shall cease to exist not later than 30 days after the date 5 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.*

**"AUTHORIZATION OF APPROPRIATIONS**

**"SEC. 411.** *Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title."*

## **PART E—NUCLEAR WASTE TECHNICAL REVIEW BOARD**

### **SEC. 5051. NUCLEAR WASTE TECHNICAL REVIEW BOARD.**

*The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is further amended by adding at the end the following new title:*

### **"TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD**

#### **"DEFINITIONS**

**"SEC. 501. As used in this title:**

**"(1) The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.**

**"(2) The term 'Board' means the Nuclear Waste Technical Review Board established under section 502.**

#### **"NUCLEAR WASTE TECHNICAL REVIEW BOARD**

**"SEC. 502. (a) ESTABLISHMENT.—***There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.*

**"(b) MEMBERS.—(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).**

**"(2) The President shall designate a member of the Board to serve as chairman.**

**"(3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).**

**"(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).**

**"(C)(i) Each person nominated for appointment to the Board shall be—**

**"(I) eminent in a field of science or engineering, including environmental sciences; and**

**"(II) selected solely on the basis of established records of distinguished service.**

**"(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.**

**"(iii) No person shall be nominated for appointment to the Board who is an employee of—**

**"(I) the Department of Energy;**

**"(II) a national laboratory under contract with the Department of Energy; or**

**"(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.**

"(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

#### "FUNCTIONS

"SEC. 503. The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including—

"(1) site characterization activities; and

"(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

#### "INVESTIGATORY POWERS

"SEC. 504. (a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

"(b) PRODUCTION OF DOCUMENTS.—(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

"(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

#### "COMPENSATION OF MEMBERS

"SEC. 505. (a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

#### "STAFF

"SEC. 506. (a) CLERICAL STAFF.—(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

"(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competi-



tive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) **PROFESSIONAL STAFF.**—(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) Not more than 10 professional staff members may be appointed under this subsection.

"(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

#### "SUPPORT SERVICES

"SEC. 507. (a) **GENERAL SERVICES.**—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) **ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.**—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) **ADDITIONAL SUPPORT.**—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) **MAILS.**—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) **EXPERTS AND CONSULTANTS.**—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

#### "REPORT

"SEC. 508. The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

*"AUTHORIZATION OF APPROPRIATIONS*

*"SEC. 509. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title.*

*"TERMINATION OF THE BOARD*

*"SEC. 510. The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository."*

**PART F—MISCELLANEOUS****SEC. 5061. TRANSPORTATION.**

*Title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121-10171) is further amended by adding at the end the following new subtitle:*

*"Subtitle H—Transportation**"TRANSPORTATION*

*"SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purpose by the Commission.*

*"(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.*

*"(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection."*

**SEC. 5062. TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIR SPACE.**

*(a) IN GENERAL.—Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note), and all other applicable laws.*

*(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION.—*

(1) **DETERMINATION OF SAFETY.**—The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

(2) **TESTING.**—In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall—

(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

(B) require an actual crash test of a cargo aircraft full loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

(3) **LIMITATION.**—The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

(4) **EVALUATION.**—The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and all other applicable law.

(c) **CONTENT OF CERTIFICATION.**—A certification referred to in subsection (a) with respect to a container shall include—

(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

(3) a statement that the container did not rupture or release its contents into the environment during testing.

(d) **DESIGN OF TESTING PROCEDURES.**—The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

(e) **TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE.**—The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

(f) **ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION.**—With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the Presi-

dent is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

(g) **INAPPLICABILITY TO MEDICAL DEVICES.**—Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(h) **INAPPLICABILITY TO MILITARY USES.**—Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(i) **INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS.**—This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note).

(j) **PAYMENT OF COSTS.**—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

#### **SEC. 5063. SUBSEABED DISPOSAL.**

Title II of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10191-10203) is amended by adding at the end the following new section:

##### **"SUBSEABED DISPOSAL**

**"SEC. 224. (a) STUDY.**—Within 270 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste. The report under this subsection shall include—

"(1) an assessment of the current state of knowledge of subseabed disposal as an alternative technology for disposal of spent nuclear fuel and high-level radioactive waste;

"(2) an estimate of the costs of subseabed disposal;

"(3) an analysis of institutional factors associated with subseabed disposal, including international aspects of a decision of the United States to proceed with subseabed disposal as an option for nuclear waste management;

"(4) a full discussion of the environmental and public health and safety aspects of subseabed disposal;

"(5) recommendations on alternative ways to structure an effort in research, development, and demonstration with respect to subseabed disposal; and

"(6) the recommendations of the Secretary with respect to research, development and demonstration in subseabed disposal of spent nuclear fuel and high-level radioactive waste.

**"(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.**—(1) There is hereby established an Office of Subseabed Disposal Research within

the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law.

"(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

"(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

"(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

"(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

"(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

"(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

"(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

"(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

"(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office."

#### SEC. 5604. DRY CASK STORAGE.

(a) **STUDY.**—During the period between the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 and October 1, 1988, the Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall conduct a study and evaluation of the use of dry cask storage technology at the sites of civilian nuclear power reactors for the temporary storage of spent nuclear fuel until such time as a permanent geologic repository has been constructed and licensed by the Nuclear Regulatory Commission (hereinafter in this section referred to as the "Commission") and is capable of receiving spent nuclear fuel. The Secretary shall report to Congress on the study under this paragraph by October 1, 1988.

(b) **CONTENTS OF STUDY.**—In conducting the study under paragraph (1) the Secretary shall—

(1) consider the costs of dry cask storage technology, the extent to which dry cask storage on the site of civilian nuclear power reactors will affect human health and the environment, the extent to which the storage on the sites of civilian nuclear power reactors affects the costs and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors the Secretary considers appropriate;

(2) consider the extent to which amounts in the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) can be used, and should be used, to provide funds to construct, operate, maintain, and safeguard spent nuclear fuel in dry cask storage at the sites for civilian nuclear power reactors;

(3) consult with the Commission and include the views of the Commission in the report under paragraph (1); and

(4) solicit the views of State and local governments and the public.

#### SEC. 5065. AMENDMENTS TO THE TABLE OF CONTENTS.

The table of contents of the Nuclear Waste Policy Act of 1982 is amended by—

(1) adding at the end of subtitle C the following new sections:

"Sec. 142. Authorization of monitored retrievable storage.

"Sec. 143. Monitored Retrievable Storage Commission.

"Sec. 144. Survey.

"Sec. 145. Site selection.

"Sec. 146. Notice of disapproval.

"Sec. 147. Benefits agreement.

"Sec. 148. Construction authorization.

"Sec. 149. Financial assistance."

(2) adding at the end of title I the following new subtitles:

"Subtitle E—Redirection of the Nuclear Waste Program

"Sec. 160. Selection of Yucca Mountain site.

"Sec. 161. Siting a second repository.

"Subtitle F—Benefits

"Sec. 170. Benefits agreements.

"Sec. 171. Content of agreements.

"Sec. 172. Review panel.

"Sec. 173. Termination.

"Subtitle G—Other Benefits

"Sec. 174. Consideration in siting facilities.

"Sec. 175. Report.

"Subtitle H—Transportation

"Sec. 180. Transportation.

(3) adding at the end of title II the following new section:

"Sec. 224. Subseabed disposal."; and

(4) adding at the end the following new titles:

"TITLE IV—NUCLEAR WASTE NEGOTIATOR

"Sec. 401. Definition.

"Sec. 402. The Office of Nuclear Waste Negotiator.

"Sec. 403. Duties of the Negotiator.

"Sec. 404. Environmental assessment of sites.

"Sec. 405. Site characterization; licensing.

- "Sec. 406. Monitored retrievable storage.
- "Sec. 407. Environmental impact statement.
- "Sec. 408. Administrative powers of the Negotiator.
- "Sec. 409. Cooperation of other departments and agencies.
- "Sec. 410. Termination of the office.
- "Sec. 411. Authorization of appropriations.

#### "TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

- "Sec. 501. Definitions.
- "Sec. 502. Nuclear Waste Technical Review Board.
- "Sec. 503. Functions.
- "Sec. 504. Investigatory powers.
- "Sec. 505. Compensation of members.
- "Sec. 506. Staff.
- "Sec. 507. Support services.
- "Sec. 508. Report.
- "Sec. 509. Authorization of appropriations.
- "Sec. 510. Termination of the Board."

#### SEC. 5066. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated from the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) for activities under such Act—

- (1) in fiscal year 1988, no more than \$567,000,000;
- (2) in fiscal year 1989, no more than \$545,000,000; and
- (3) in fiscal year 1990, no more than \$484,000,000.

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